***THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

–

+ WRIT PETITION No. 9454 of 1994

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%Dated 29.06.2005

1. The Chief Engineer, I.T.D.A., (TW Dept.),

Hyderabad and others.

…….. Petitioners

$ 1. The Presiding Officer, Industrial Tribunal

cum Labour Court, Visakhapatnam. And another

…… Respondent

! Counsel for Petitioners : GP for Sopcial Welfare

^ Counsel for Respondent No.2 : Mr.G.Vidhya Sagar

< GIST:

> HEAD NOTE:

? Cases referred

1. (2003) 4 Supreme Court Cases 27
2. (2003) 5 Supreme Court Cases 12
3. AIR 1930 Privy Council 59
4. AIR 1979 SUPREME COURT 1652

5. 1993 (1) L.L.J. 626 (A.P.)

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY NINTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

–

WRIT PETITION NO : 9454 of 1994

Between:

1. The Chief Engineer, I.T.D.A., (TW Dept),

Hyderabad.

2. The Superintending Engineer,
I.T.D.A., (TW Dept), Section-8,
Muvvalavanipalem, Visakhapatnam.

3. The Executive Engineer, I.T.D.A., (TW Dept),
Paderu Head Quarters, Paderu,
Visakhapatnam District.

4. The Dy. Executive Engineer, I.T.D.A., (TW Dept),
Paderu, Visakhapatnam District.

..... PETITIONERS

AND

1. The Presiding Officer, Industrial
Tribunal-cum-Labour Court, Visakhapatnam.

2. B.V.Ramana Rao, ITDA Dept.
Visakhapatnam, C/o.AVVS Radha Krishna,
D.No.47-7-40, Dwarakanagar,
Visakhapatnam-16

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue any appropriate writ, order or direction more particularly one in the nature ;of “Writ of Certiorari” calling for the records pertaining to the award

dated 05-06-1993 in I.D.No.158 of 1991 on the file of the 1st respondent herein and quash the same is as arbitrary, illegal and contrary to law and pass such other order or orders as may be just.

Counsel for the Petitioners: GP FOR SOCIAL WELFARE

Counsel for the Respondent No.2: MR.G.VIDYASAGAR

The Court made the following :

HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.9454 of 1994

ORDER:

This writ petition is filed challenging the award of the Industrial Tribunal-cum-Labour Court, Visakhapatnam, (herein after referred to as 'Tribunal') in I.D.No.158 of 1991, dated 05-06-1993, whereby the Tribunal directed reinstatement of the 2nd respondent herein with backwages at Rs.600/- per month till the date of reinstatement with continuity of service.

2. The facts as referred to in the award of the Tribunal are as follows:

The 2nd respondent-workman joined the services of the petitioners herein as temporary workman on 24-10-1987 at Paderu Tribal Werlfare Divisional Office. He was deputed to the Circle Office (Office of the Superintendent Engineer, Visakhapatnam), wherein he worked till 03-04-1991. He was transferred to Paderu and his services were terminated on 04-07-1991. The workman contended before the Tribunal that while he was paid Rs.600/- per month, at the time of joining service, the same was later increased to Rs.900/- per month and that he was being paid Rs.1200/- per month on the date of his termination. The workman was given promotion as Man Mazdoor in the year 1989 and in the said capacity, he continued in service till the date of his termination. It was his case that he was in continuous service without any break and that he was not given any notice at the time of termination of service.

No enquiry was conducted nor he was paid compensation on the date of his removal from service. He also contended that he had continuously served for more than three years and that there were 20 persons juniors to him who were still continuing in the respondent department.

3. The petitioner herein filed a written statement before the Tribunal contending that the workman had himself failed to attend duty after 04-07-1991 and as such the question of termination did not arise. The allegation that the petitioner was terminated from service was denied by the petitioners herein and it is stated that the workman had himself avoided attending duty at Paderu after 04-07-1991.

4. The Tribunal framed the issue for its consideration, as to whether the workman had voluntarily absented himself from attending service or his services were terminated without notice or payment of compensation in lieu of notice and to what relief the workman was entitled.

5. The Tribunal considered the evidence adduced by the workman including the Service Certificate Ex.W-1, according to which he had worked from 24-10-1987 till
30-09-1989 in the Tribal Welfare Section, Visakhapatnam. The Tribunal also believed the oral evidence of the workman that he continuously worked from 24-10-1987 to 04-07-1991 inasmuch as the same was not denied in the written statement filed by the employer (petitioner in this Writ Petition). The Tribunal considered the evidence of the Executive Engineer, Tribal Welfare, Paderu, who deposed that the services of the workman and that of one Sri V.Ch.Baba in I.D.No.159 of 1991, were terminated as the projects in which they worked were closed in the month of June, 1990 and that for want of work, the services of the workman were terminated and not on any other ground.

6. The Tribunal held that this evidence adduced on behalf of the employer was contrary to the plea taken in the written statement filed by them and it was not their case in their written statement that for want of vacancy, the services of the workmen were terminated. On the other

hand, it was their specific case in their written statement that the workman had voluntarily stopped attending work after
04-07-1991. The Tribunal held that the evidence adduced on behalf of the employer could not be considered as it was a new version. The Tribunal took note of the admission of the Executive Engineer that one month's notice was not given to the workman before termination of his services, that the workman had been deputed to work in the office of Superintendent Engineer, that he worked there from
27-08-1987 to 03-04-1991 and later was transferred to the Office of Executive Engineer, Paderu, where he worked from 03-04-1991 to 04-07-1991.

7. Since no notice was given to the workman asking him to come and join duty and inasmuch as the workman had established that he had rendered service for more than three years continuously under the employer, the Tribunal held that it was for the employer to prove that the workman had voluntarily abandoned service in spite of being given notice and in the absence of proof in this regard, it had necessarily to be accepted that the services of the workman were terminated contrary to Section 25-F of the Industrial Disputes Act, 1947 (for brevity 'the Act'). Having held that the termination of services of the workman was contrary to the provisions of Section 25-F of the Act, the Tribunal held that the workman was entitled for reinstatement. With regard to payment of backwages, the Tribunal accepting the evidence of the Office Superintendent of the employer, that the workman was drawing Rs.600/- per month towards daily wages, directed that the workman shall be paid back wages at Rs.600/- per month and that he was also entitled for continuity of service.

8. The learned Government Pleader for Social Welfare, appearing on behalf of the petitioners, relies on the Judgments of the Supreme Court in ***S.M.NILAJKAR v. TELECOM DISTRICT MANAGER and SURENDRA KUMAR SHARMA v. VIKAS ADIKARI,*** in support of his contention that since the workman's services were terminated on the project itself having

been completed, termination of services of the workman could not be said to be in violation of Section 25-F of the Act.

9. As rightly held by the Tribunal, while the Executive Engineer, Tribal Welfare, Paderu, (examined on behalf of the employer), had deposed that the services of the workman herein and another were terminated on the project being closed, there was no such plea in the written statement filed by the employee and in the absence of any such plea in the written statement, the evidence adduced would not be considered as it was a new version.

10. It is well settled that allegations which are not pleaded, even if there is evidence in support thereof, cannot be examined. ***(SIDDIK MAHOMAD SHAH v. MT.SARAN AND OTHERS).***

11. In ***SHANKAR v. BRITANNIA BISCUIT CO.,*** the Supreme Court held:

> "If such be the duties and functions of the Industrial Tribunal or the Labour Court, any party appearing before it must make a claim or demur the claim of the other side and when there is a burden upon it to prove or establish the fact so as to invite a decision in its favour, it has to lead evidence. The quasi-judicial tribunal is not required to advise the party either about its rights or what it should do or omit to do. Obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be who would fail if no evidence is led. It must seek an opportunity to lead evidence and lead evidence. A contention to substantiate which evidence is necessary has to be pleaded. If there is no pleading raising a contention there is no question of substantiating such a non-existing contention by evidence. It is well settled that allegation which is not pleaded, even if there is evidence in support of it, cannot be examined because the other side has no notice of it and if entertained it would tantamount to granting an unfair advantage to the first mentioned party. We are not unmindful of the fact that pleadings before such bodies have not be to read strictly, but it is equally true that the pleadings must be such as to give sufficient notice to the other party of the case it is called upon to meet. This view expressed in *Tin Printers (Pvt.) Ltd. V. Industrial Tribunal* (1967) 2 Lab LJ 677 at p.680 (Punj), commends to us. The rules of fair play demand that where a party seeks to establish a contention which if proved would be sufficient to deny relief to the opposite side, such a contention has to be specifically pleaded and then proved. But if there is no pleading there is no question of proving

something which is not pleaded. This is very elementary."

12. In ***MGT. OF GLAZO (I) LTD, MADRAS v. P.O., L.C., GUNTUR & ANR***, this Court held that:

> "The labour Court held that the enquiry was conducted at Vijayawada and Madras, and therefore, workman being native of Vijayawada, was not even in a position to engage a Lawyer of his own choice and give proper instructions for his defence and thereby the enquiry was vitiated by violation of principles of natural justice. Regarding this, the Management has specifically stated that the workman himself has consented for conducting enquiry at Vijayawada, Hyderabad and Madras and at no time, he objected to such a course. Apart from it, the workman has not agitated this ground in the defence statement filed by him. When the workman did not raise his little finger about his objection or his intention to have the services of a Counsel, in the domestic enquiry, he cannot raise such an objection before the Labour Court as having been deprived of the same. For this proposition, learned Counsel for the Management relied on a decision reported in *Shankar Chakravarti v. Britannia Biscuit Co. Ltd.,* 1979-II-L.L.J-194 (S.C.) and *Shri Lachman Das v. M/s. Indian Express Newspapers (Bombay) Pvt. Ltd.,* (1977 Lab IC 823) (Delhi).
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> The above two decisions categorically held that "the law is well settled that no amount of evidence can be looked upon as a plea which was never put forward" and "it is well settled that allegation which is not pleaded, even if there is evidence in support of it, cannot be examined because the other side has no notice of it and if entertained it would tantamount to granting an unfair advantage to the first mentioned party."

13. Refusal by the Tribunal to consider the evidence, in the absence of pleadings, is valid and the contentions of the learned Government Pleader, in this regard are liable to be rejected.

14. The judgments of Supreme Court relied upon by the learned Government Pleader have no application to the facts of the present case.

15. In **S.M.NILAJKAR'S** case (cited 1 supra), the Supreme Court held that:

> "The termination of service of a workman engaged in a scheme or

project may not amount to retrenchment within the meaning of sub-clause (bb) subject to the following conditions being satisfied:

(i) that the workman was employed in a project or scheme of temporary duration;

(ii) the employment was on a contract, and not as a daily-wager simplicitor, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project;

(iii) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract; and

(iv) the workman ought to have been apprised or made aware of the above said terms by the employer at the commencement of employment."

16. The aforementioned judgment has been followed in **SURENDRA KUMAR SHARMA'S** case (cited 2 supra), wherein, the Supreme Court held that:

> "When posts temporarily created for fulfilling the needs of a particular project or scheme limited in its duration come to an end because the need for the project comes to an end either because the need was fulfilled or the project had to be abandoned wholly or partially for want of funds, the employer cannot by a writ of mandamus be directed to continue employing such employees as have been dislodged, because such a direction would amount to requisition for creation of posts though not required by the employer and funding such posts though the employer did not have funds available for the purpose."

17. In order to prove that the termination of the workman is outside the purview of Section 25-F of the Act, it is for the employer to plead and prove that:

1. the workman was employed in a project of temporary duration,
2. the employment was on a contract, (not on daily wages), and provided that the employment would come to an end on the expiry of the project,

3. the employment, consistent with the terms of the contract, had come to an end with the termination of the project, and

4. the workman had been apprised or made aware about these terms by the employer at the commencement of employment.

18. The evidence of the Executive Engineer, who appeared as MW-1 before the Tribunal, does not satisfy any of the aforesaid requirements. What all he stated in his chief examination was that there were two projects by name National Rural Employment Programme and Rural Labour Employment Programme, that these projects were closed in the month of June, 1991, that after the said two projects were closed, the services of the workman was terminated for want of work, that there was no work at any time to take him in service or to provide him employment and that after his removal no new persons were appointed. This evidence of the Executive Engineer does not satisfy the conditions laid down by the Supreme Court in **S.M.NILAJKAR'S** case (cited 1 supra). The Executive Engineer in his evidence, did not state that the workman was employed in a project of limited duration or that the employment was on contract basis or even that the workman was apprised, at the time of his initial appointment regarding the temporary duration of his employment and the life of the project itself.

19. The contention of the learned Government Pleader that termination of the services of the workman, consequent on closure of the project, would not fall under the purview of Section 25-F of the Act, 1947, is liable to be rejected. Since the conditions prescribed in Section 25-F of the I.D.Act was not complied with prior to termination of the services of the workman, the workman is entitled for reinstatement.

20. The learned Government Pleader also submits that this writ petition is part of a batch of writ petitions in W.P.Nos.8413 of 1994, 7980 of 1994 and 8418 of 1994, all of which relate to the Tribal Welfare Department, Paderu Division of Visakhapatnam. The three writ petitions, referred to by the learned Government Pleader, were dismissed by this Court by order dated 28-10-2004 upholding the findings of the Tribunal that there was violation of Section 25-F of the Act and that there was no error apparent on the face of the record calling

for interference to the award passed by the Tribunal.

21. In the circumstances, the award of the Tribunal directing reinstatement of the workman with back wages at Rs.600/- per month with continuity of service is upheld.

22. The writ petition is accordingly dismissed. There shall be no order as to costs.

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June 29, 2005

Note:

Mark the L.R.Copy.

B/o.

KVR

One Fair copy to the Honourable Sri Justice Ramesh Ranganathan (For his Lordship's kind perusal)

To

1. The Presiding Officer, Industrial

   Tribunal-cum-Labour Court, Visakhapatnam.

2. Two CDs. to the GP for Social Welfare, High Court Buildings, High Court of AP, Hyderabad (O.U.T.)

3. 8 L.R.Copies.

4. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.

5. The Secretary, A.P. Advocates Association Library, High court

Buildings, Hyderabad.

6. Two CD Copies.